



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2016-0398; FRL-9981-32-Region 1]

Air Plan Approval; New Hampshire; Updates to Enhanced Motor Vehicle Inspection and Maintenance Program Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision includes an amended regulation for the enhanced motor vehicle inspection and maintenance (I/M) program in New Hampshire. New Hampshire continues to implement a test and repair network for an on-board diagnostic (OBD2) testing program. The submitted New Hampshire regulation updates and clarifies the implementation of the New Hampshire I/M program. The intended effect of this action is to approve the updated I/M program regulation into the New Hampshire SIP. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2016-0398 at www.regulations.gov, or via email to garcia.ariel@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video,

etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www.epa.gov/dockets/commenting-epa-dockets. Publicly available docket materials are available at www.regulations.gov or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square – Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ariel Garcia, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA Region 1 Regional Office, 5 Post Office Square, Suite 100 (Mail code: OEP05-2), Boston, MA 02109-3912, telephone number: (617) 918-1660, email: garcia.ariel@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. Background and Purpose

On June 7, 2016, the State of New Hampshire submitted a formal revision to its State Implementation Plan (SIP). The submitted SIP revision included amendments to the New Hampshire Code of Administrative Rules Chapter Saf-C 3200 entitled, “Official Motor Vehicle Inspection Requirements,” which update the enhanced motor vehicle inspection and maintenance (I/M) program in New Hampshire.

New Hampshire previously submitted an I/M program SIP revision on November 17, 2011, which EPA approved into the New Hampshire SIP on January 25, 2013 (78 FR 5292). New Hampshire’s November 17, 2011 SIP revision included all the regulatory and technical documentation required in an I/M SIP submittal to address the requirements of EPA’s I/M regulations. The emissions modeling, I/M SIP narrative, and other technical documentation, included in New Hampshire’s November 17, 2011 submittal continue to be applicable as the technical demonstration that New Hampshire’s implemented I/M program meets the requirements of EPA’s I/M regulations. The regulatory amendments made by New Hampshire to regulation Saf-C 3200, submitted in the June 2016 SIP revision, do not reflect any changes to the technical implementation characteristics of the New Hampshire I/M program and thus result in no changes to the EPA-approved emissions modeling analysis.

II. Summary of New Hampshire’s Regulatory Changes

New Hampshire’s amended Saf-C 3200 regulation, submitted as a SIP revision on June 7, 2016, updates a number of regulatory provisions by adding language to clarify the I/M program requirements in New Hampshire. A summary of the most substantial changes made to New

Hampshire's SIP-approved regulation follows. New Hampshire (1) added clarifying definitions to Saf-C 3202; (2) amended Saf-C 3203.03 to change the month by which government fleet vehicles need to be inspected, i.e. to September of each year; (3) amended Saf-C 3204.02 and adopted Saf-C 3205.11 to clarify both the required information to be submitted in an application to become an official inspection station, as well as the criteria for denying an application; and (4) amended Saf-C 3218 through Saf-C 3220 to clarify and update the criteria for performance or condition of vehicle components that will result in the rejection of a vehicle.

III. New Hampshire Satisfying Clean Air Act Requirements for I/M programs

In this document, EPA is only proposing to update New Hampshire's I/M regulation by revising subsections or provisions of the regulation as it currently exists in the New Hampshire SIP.¹ As stated earlier in this document, the remaining technical aspects (i.e., I/M SIP narrative, the emissions modeling, and other technical documentation) included in New Hampshire's November 17, 2011 SIP revision, and approved by EPA on January 25, 2013 (78 FR 5292), continue to be applicable as the technical demonstration that New Hampshire's implemented I/M program meets the requirements of EPA's I/M regulations.

IV. Proposed Action

EPA is proposing to approve New Hampshire's June 7, 2016 SIP revision request. This SIP revision request contains New Hampshire's revised motor vehicle I/M program regulation. Specifically, EPA is proposing to approve amendments to the following New Hampshire Department of Safety Regulation Saf-C 3200 subsections or provisions as they currently exist in the New Hampshire SIP: amendments to Saf-C 3202, Saf-C 3203, Saf-C 3204, Saf-C 3205, Saf-

¹ EPA's January 25, 2013 (78 FR 5292) approval of New Hampshire's November 17, 2011 I/M SIP submittal describes how New Hampshire's I/M program satisfies the OBD2 and other I/M regulatory requirements established by the Clean Air Act and EPA's I/M regulations. In addition, EPA's January 25, 2013 (78 FR 5292) approval contains a detailed discussion of EPA's rationale for approving New Hampshire's November 17, 2011 I/M SIP revision and will not be restated in this document.

C 3206.04, Saf-C 3207.01, Saf-C 3209, Saf-C 3210, Saf-C 3218, Saf-C 3220, Saf-C 3222, and Saf-C 3248. In addition, EPA is proposing to approve Saf-C 3219 which had not previously been submitted for inclusion in the New Hampshire SIP.

EPA is proposing to approve New Hampshire's June 7, 2016 SIP revision, containing New Hampshire's updated I/M program regulation, because it is consistent with the CAA's I/M requirements and EPA's I/M regulations, and will strengthen the SIP. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

V. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the aforementioned New Hampshire Department of Safety Regulation Saf-C 3200 subsections identified in section IV of this proposal, except as set forth below. The EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

New Hampshire's I/M program regulation contains enforcement provisions that detail state enforcement procedures, including administrative, civil, and criminal penalties, and administrative and judicial procedures. Such enforcement-related provisions are required elements of an I/M SIP under 40 CFR 61.364, and EPA is proposing to approve the provisions as meeting those requirements. However, EPA is not proposing to incorporate those provisions by

reference into the EPA-approved federal regulations at 40 CFR part 52. In any federal action to enforce violations of the substantive requirements of the New Hampshire I/M program, the relevant provisions of Section 113 or 304 of the CAA, rather than state enforcement provisions would govern. Similarly, the applicable procedures in any federal action would be the applicable federal court rules or EPA's rules for administrative proceedings at 40 CFR part 22, rather than state administrative procedures. Since the state enforcement provisions would not be applicable in a federal action, incorporating these state-only enforcement provisions into the federal regulations would have no effect. To avoid confusion to the public and regulated parties, EPA is not proposing to incorporate these provisions by reference into the EPA-approved federal regulations in the New Hampshire plan identification in 40 CFR part 52. Specifically, EPA is not proposing to incorporate New Hampshire's regulations Saf-C 3222.04(d) and Saf-C 3248 into the federal regulations at 40 CFR 52.1520(c).

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 31, 2018.

Alexandra Dunn,
Regional Administrator,
EPA Region 1.

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